Remarks/Arguments

A restriction requirement has been proposed between

Group I - Claims 1, 10-11, 16-18, 35 and 43 drawn to compounds and compositions, and

Group II - Claims 36-38 and 40-41, drawn to methods of treating diseases.

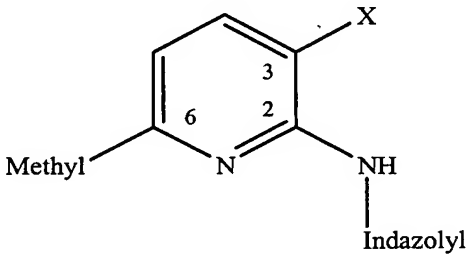
Applicants elect the invention of Group I, the subject matter of Claims 1, 10-11, 16-18, 35 and 43.

Reconsideration and allowance are respectfully requested in light of this amendment and the following remarks. Applicants have amended the claims to expedite prosecution of the application. This amendment is not intended to acquiesce to the rejections raised by the Examiner and Applicants reserve the right to pursue broader claim subject matter in follow-on applications.

Claims 1, 10-11, 16-18, 35 and 43 were rejected under 35 USC 112, second paragraph as being indefinite. Applicants request reconsideration of the rejections in view of the amended Claim.

Claims 1, 10-11, 16-18, 35 and 43 were rejected under 35 USC 102(e), as being anticipated by WO 01/78648 (also US Patent No. 6,608,058). The Examiner specifically identifies Examples 1-23 as anticipatory to the claims. Only Examples 1-20 are nicotinamides. These compounds are excluded from the claims in the second proviso. Applicants assert the presently claimed compounds are novel over the art and request reconsideration of the rejections in view of the current Claims.

Claims 1, 10-11, 16-18, 35 and 43 were rejected under 35 USC 103(a) as unpatentable over Yoon et al. (WO 01/78648, US Patent No. 6,608,058). Applicants respectfully disagree. The examples described in this reference have a 2-(indazolylamino)-6-methyl-pyridine structure similar to that shown below:



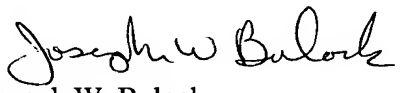
where X is a substituted amide or carbohydrazide. Yoon et al. teach away from making the compounds of the present invention, as they **require** a 6-methyl pyridine structure, with the only variability allowed at position 3. Yoon et al. do not describe anti-angiogenic activity for their compounds, instead they describe RNA polymerase inhibition activity for potential treatment of hepatitis and HIV. In fact Yoon et al. specifically point out that since the target RNA polymerases are not of human origin the compounds have low toxicity (6,608,058 col. 7, line 54-56). Therefore one interested in making the nictoinamides of the present invention as kinase inhibitors would be

directed away from the present compounds by Yoon et al. Obvious to try is not the appropriate standard under §103 [In re O'Farrell, 7 USPQ 2d 1673 (Fed. Cir. 1988)]. In view of the above, the reference does not describe nor suggest compounds of the present invention. Applicants therefore submit that the compounds of the present invention are not obvious in view of the cited prior art.

Claims 1, 10-11, 16-18, 35 and 43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over the pending claims of co-pending application 10/197,918. Although the Applicants do not agree with the rejection, the provisional nature of the rejection is noted and Applicants request that the issue be deferred until such time as allowable subject matter has been indicated in either application. Alternatively, a terminal disclaimer is provided herewith.

It is therefore respectfully submitted that Claims 1, 10-11, 16-18, 35 and 43-52 are now in condition for allowance. Accordingly, reconsideration and withdrawal of the outstanding rejections, and allowance of Claims 1, 10-11, 16-18, 35 and 43-52 are respectfully solicited.

Respectfully submitted,



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